

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1320

Introduced by
Senator Nelson

AN ACT

AMENDING SECTIONS 28-372, 28-924, 28-925, 28-3312, 28-3392, 28-4541, 28-5001, 28-5241 AND 28-5736, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-372, Arizona Revised Statutes, is amended to
3 read:

4 28-372. Returned checks; dishonored electronic payments; fees

5 A. The director may assess:

6 1. The fee specified in section 44-6852 for a check, draft or order
7 that has been dishonored because of insufficient monies, payments stopped or
8 closed accounts.

9 2. Collection costs.

10 3. A FEE TO BE DETERMINED BY THE DIRECTOR FOR EACH ELECTRONIC PAYMENT
11 THAT HAS BEEN DISHONORED BECAUSE OF INSUFFICIENT MONIES, PAYMENTS STOPPED OR
12 CLOSED ACCOUNTS.

13 B. The director shall deposit, pursuant to sections 35-146 and 35-147,
14 service fees for dishonored checks, drafts, ~~or~~ orders OR ELECTRONIC PAYMENTS
15 that were submitted for titling and registering vehicles in the state highway
16 fund established by section 28-6991. The director shall deposit, pursuant to
17 sections 35-146 and 35-147, all other service fees collected under subsection
18 A of this section in the highway user revenue fund.

19 Sec. 2. Section 28-924, Arizona Revised Statutes, is amended to read:

20 28-924. Motor vehicle head lamps

21 A. A motor vehicle other than a motorcycle, an all-terrain vehicle or
22 a motor driven cycle shall be equipped with at least two head lamps with at
23 least one on each side of the front of the motor vehicle. The head lamps
24 shall comply with the requirements and limitations of this article.

25 B. A motorcycle, an all-terrain vehicle and a motor driven cycle shall
26 be equipped with at least one and not more than two head lamps that comply
27 with the requirements and limitations of this article.

28 C. A head lamp on a motor vehicle, including a motorcycle, an
29 all-terrain vehicle and a motor driven cycle, shall be located at a height of
30 not more than fifty-four inches nor less than ~~twenty-four~~ TWENTY-TWO inches
31 to be measured as provided in section 28-923, subsection B.

32 Sec. 3. Section 28-925, Arizona Revised Statutes, is amended to read:

33 28-925. Tail lamps

34 A. A motor vehicle, trailer, semitrailer and pole trailer and any
35 other vehicle that is being drawn at the end of a train of vehicles shall be
36 equipped with at least one tail lamp mounted on the rear. When lighted as
37 required by this article, the tail lamp shall emit a red light plainly
38 visible from a distance of five hundred feet to the rear, except that in the
39 case of a train of vehicles, only the tail lamp on the rearmost vehicle need
40 actually be seen from the distance specified.

41 B. A tail lamp on a vehicle shall be located at a height of not more
42 than ~~sixty~~ SEVENTY-TWO inches nor less than fifteen inches to be measured as
43 provided in section 28-923, subsection B.

1 C. Either a tail lamp or a separate lamp shall be constructed and
2 placed in a manner that illuminates with a white light the rear license plate
3 and renders it clearly legible from a distance of fifty feet to the rear. A
4 tail lamp or tail lamps together with any separate lamp for illuminating the
5 rear license plate shall be wired to provide that the tail lamp or lamps are
6 lighted whenever the head lamps or auxiliary driving lamps are lighted.

7 Sec. 4. Section 28-3312, Arizona Revised Statutes, is amended to read:

8 28-3312. Mandatory disqualification of commercial driver
9 licenses; definition

10 A. The department shall disqualify a person required to have a
11 commercial driver license or a commercial driver license holder from driving
12 a commercial motor vehicle as follows:

13 1. Except as provided in subsection E of this section and except as
14 otherwise provided in this subsection, for at least one year if a person:

15 (a) Refuses a test in violation of section 28-1321.

16 (b) Is convicted of a first violation of any of the following:

17 (i) Driving a commercial motor vehicle under the influence of
18 intoxicating liquor or a controlled substance or while having an alcohol
19 concentration of 0.04 or more.

20 (ii) Leaving the scene of an accident involving a motor vehicle driven
21 by the person.

22 (iii) Using a motor vehicle in the commission of a felony.

23 (iv) A violation of chapter 4, article 3 of this title while operating
24 a noncommercial motor vehicle.

25 (v) Driving a commercial motor vehicle while, as a result of prior
26 violations of this title committed while operating a commercial motor
27 vehicle, the person's commercial driver license is revoked, suspended or
28 canceled or the person is disqualified from operating a commercial motor
29 vehicle.

30 (vi) Causing a fatality through the negligent operation of a
31 commercial motor vehicle, including a conviction of manslaughter, homicide or
32 negligent homicide resulting from operation of a motor vehicle.

33 2. For at least three years, if the person is convicted of any of the
34 violations prescribed in paragraph 1 of this subsection and the violation
35 occurred while the person was transporting a hazardous material in the
36 quantity and under the circumstances that require placarding of the transport
37 vehicle under the department's safety rules pursuant to chapter 14 of this
38 title.

39 3. For the life of the person, if the person is convicted of two or
40 more violations of any of the offenses prescribed in paragraph 1 of this
41 subsection or of any combination of those offenses arising from two or more
42 separate incidents. The department shall consider only offenses committed
43 from and after December 31, 1989 in applying this paragraph.

1 4. Permanently if the person is convicted of using any motor vehicle
2 in the commission of a felony involving the manufacture, distribution or
3 dispensing of a controlled substance or possession with intent to
4 manufacture, distribute or dispense a controlled substance.

5 5. For at least sixty consecutive days, if the person is convicted of
6 two serious traffic violations committed in a motor vehicle arising from
7 separate incidents occurring within a three year period from the date of the
8 violation.

9 6. For at least one hundred twenty days served in addition to any
10 other disqualification, if the person is convicted of a third or subsequent
11 serious traffic violation committed in a motor vehicle arising from separate
12 incidents occurring within a three year period from the date of the
13 violation.

14 B. Except as provided in subsection C of this section, a person
15 required to have a commercial driver license or a commercial driver license
16 holder who is found responsible for violating an out-of-service order
17 pursuant to section 28-5241 is disqualified from driving a commercial motor
18 vehicle as follows:

19 1. For a period of ~~ninety~~ ONE HUNDRED EIGHTY days if the person is
20 found responsible for a first violation of an out-of-service order.

21 2. For a period of ~~one-year~~ TWO YEARS if the person is found
22 responsible for a second violation of any out-of-service order during any ten
23 year period arising from separate incidents.

24 3. For a period of three years if the person is found responsible for
25 a third or subsequent violation of any out-of-service order during any ten
26 year period arising from separate incidents.

27 C. A person required to have a commercial driver license or a
28 commercial driver license holder who is found responsible for violating an
29 out-of-service order pursuant to section 28-5241 while transporting hazardous
30 materials or while operating a commercial motor vehicle designed or used to
31 transport sixteen or more passengers, including the driver, is disqualified
32 from driving a commercial motor vehicle as follows:

33 1. For a period of one hundred eighty days if the person is found
34 responsible for a first violation of an out-of-service order.

35 2. For a period of three years if the person is found responsible for
36 a second or subsequent violation of any out-of-service order during any ten
37 year period arising from separate incidents.

38 D. A person required to have a commercial driver license or a
39 commercial driver license holder who is convicted of or found responsible for
40 violating any federal, state or local railroad grade crossing law, ordinance
41 or regulation is disqualified from driving a commercial motor vehicle as
42 follows:

43 1. For a period of sixty days if a person is convicted of or found
44 responsible for a first violation.

2. For a period of one hundred twenty days if a person is convicted of or found responsible for a second violation during any three year period.

3. For a period of one year if a person is convicted of or found responsible for a third or subsequent violation during any three year period.

E. If a federal agency determines that a commercial motor vehicle licensee is driving in a manner that constitutes an imminent hazard, the department, on receipt of notification by the federal government, shall disqualify the driver for a period not to exceed one year. The disqualification shall run concurrently with any other disqualification imposed on the driver. For the purposes of this subsection, "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding to decrease the risk of death, illness, injury or endangerment.

F. The department shall keep records of findings of responsibility for a civil traffic violation and of conviction of any moving criminal traffic violation for a commercial driver licensee for violations in any type of motor vehicle and for a person required to have a commercial driver license if the violations arise from the operation of a commercial motor vehicle. The department shall make the records available to other states, the United States secretary of transportation, the driver and any motor carrier or prospective motor carrier or the motor carrier's designated agent within ten days after receiving ~~notice~~ A REPORT of a conviction OR FINDING OF RESPONSIBILITY in this state or receipt of a ~~notice~~ REPORT of a conviction OR FINDING OF RESPONSIBILITY or disqualification received from another state.

G. Disqualification for a serious traffic violation committed by a commercial driver license holder while operating a noncommercial motor vehicle applies only if the conviction results in the revocation, cancellation or suspension of the person's commercial driver license or noncommercial driver license.

H. The department may adopt rules establishing guidelines and conditions under which the department may reduce a disqualification for life pursuant to subsection A, paragraph 3 of this section to a disqualification of at least ten years. If a person's disqualification is reduced pursuant to rules adopted pursuant to this subsection and the person is subsequently convicted of a violation described in subsection A, paragraph 1 of this section, the person is permanently disqualified from driving a commercial vehicle and is not eligible to apply for a reduction of the disqualification pursuant to rules adopted pursuant to this subsection.

I. Except as provided in subsection E of this section, the beginning date of the disqualification shall be the date the department receives the report of conviction or finding of responsibility.

1 J. For the purposes of this section, "serious traffic violation" means
2 a conviction or finding of responsibility for any of the following:

3 1. Excessive speeding involving a single offense for a speed of
4 fifteen miles per hour or more above the posted speed limit.

5 2. Reckless driving as provided by section 28-693.

6 3. Aggressive driving as provided by section 28-695.

7 4. Racing as defined in section 28-708.

8 5. Improper or erratic traffic lane changes as provided by section
9 28-729.

10 6. Following the vehicle ahead too closely as provided by section
11 28-730.

12 7. A violation of this title that is connected with a fatal traffic
13 accident.

14 8. Driving a commercial motor vehicle if the person has not been
15 issued a valid commercial driver license pursuant to this chapter.

16 9. Driving a commercial motor vehicle without a commercial driver
17 license in the person's possession.

18 10. Driving a commercial motor vehicle without having a valid
19 endorsement for the type of commercial motor vehicle or motor vehicle
20 combination being operated.

21 Sec. 5. Section 28-3392, Arizona Revised Statutes, is amended to read:
22 28-3392. Defensive driving school; eligibility

23 A. A court:

24 1. Shall allow an individual who is issued a citation for a civil
25 traffic moving violation pursuant to chapter 3, articles 2, 3, 4 and 6
26 through 15 of this title or a local civil traffic ordinance relating to the
27 same subject matter to attend a defensive driving school for the purposes
28 provided in this article.

29 2. Except as prescribed in subsection C of this section, may allow an
30 individual who is issued a citation for a violation of section 28-701.02 to
31 attend a defensive driving school.

32 B. A person who attends a defensive driving school pursuant to this
33 article is not eligible to attend a defensive driving school again within
34 twenty-four months from the day of the last violation for which the person
35 was authorized by this article to attend a defensive driving school.

36 C. Notwithstanding subsection A of this section:

37 1. An individual who commits a civil or criminal traffic violation
38 resulting in death or serious physical injury is not eligible to attend a
39 defensive driving school, except that the court may order the individual to
40 attend a defensive driving school in addition to another sentence imposed by
41 the court on an adjudication or admission of the traffic violation.

42 2. If a commercial driver license holder **OR A DRIVER OF A COMMERCIAL**
43 **MOTOR VEHICLE THAT REQUIRES A COMMERCIAL DRIVER LICENSE** is found guilty or
44 responsible for a moving violation, the court may require the violator to
45 attend defensive driving school as an element of sentence, but may not

dismiss the conviction or finding of responsibility and shall report the conviction or finding of responsibility to the department as prescribed in section 28-1559. A commercial driver license holder ~~OR A DRIVER OF A COMMERCIAL MOTOR VEHICLE THAT REQUIRES A COMMERCIAL DRIVER LICENSE~~ is not eligible for the defensive driving diversion program.

Sec. 6. Section 28-4541, Arizona Revised Statutes, is amended to read:
28-4541. Continuation date; delinquent fee due from manufacturer; penalty

A. IN ORDER TO DISTRIBUTE THE CONTINUATION WORKLOAD AS UNIFORMLY AS PRACTICABLE THROUGHOUT THE TWELVE MONTHS OF THE CALENDAR YEAR, THE DIRECTOR MAY PROVIDE FOR STAGGERED CONTINUATION DATES FOR THE RIGHT TO USE A MANUFACTURER LICENSE PLATE. IN ORDER TO INITIATE A STAGGERED CONTINUATION SYSTEM, THE DIRECTOR MAY INITIALLY PROVIDE OR CONTINUE THE RIGHT FOR MORE OR LESS THAN A TWELVE MONTH PERIOD, BUT NOT MORE THAN EIGHTEEN MONTHS, AND MAY PRORATE THE FEES.

B. If a manufacturer fails, neglects or refuses to file an application for renewal and pay the required fee for the ensuing year on or before midnight ~~of December 1 of each year~~ ON THE CONTINUATION DATE, the fee is delinquent, and the department shall charge and collect a penalty equal to the fee if the manufacturer files an application for renewal after ~~December 1~~ THE CONTINUATION DATE.

Sec. 7. Section 28-5001, Arizona Revised Statutes, is amended to read:
28-5001. Definition of title service company

In this chapter, unless the context otherwise requires, "title service company" means a person, other than a licensed motor vehicle dealer, who for a fee DOES ANY OF THE FOLLOWING:

1. Issues temporary registration plates. ~~or~~
2. Prepares ~~and~~ OR submits to the director applications for registration of, and certificates of title to, motor vehicles.
3. PREPARES OR SUBMITS TO THE DIRECTOR FUEL TAX REPORTS ON BEHALF OF LICENSED MOTOR CARRIERS.

Sec. 8. Section 28-5241, Arizona Revised Statutes, is amended to read:
28-5241. Out-of-service orders; violation; civil penalty; definition

A. A motor carrier shall not require or permit a driver:

1. To operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order to operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

B. A driver:

1. Shall not operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order shall not operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

C. Notwithstanding section 28-5240, a violation of this section is a civil traffic violation.

D. The court shall impose:

1. ~~ON A DRIVER WHO VIOLATES OR FAILS TO COMPLY WITH AN OUT-OF-SERVICE ORDER~~ a civil penalty of:

(a) At least ~~one TWO~~ thousand ~~one FIVE~~ hundred dollars ~~and not more than two thousand seven hundred fifty dollars on a driver who violates or fails to comply with an out-of-service order~~ ~~FOR AN INITIAL VIOLATION OR FAILURE.~~

(b) ~~FIVE THOUSAND DOLLARS FOR A SUBSEQUENT VIOLATION OR FAILURE.~~

2. A civil penalty of at least two thousand seven hundred fifty dollars and not more than ~~eleven~~ ~~TWENTY-FIVE~~ thousand dollars on a motor carrier who violates an out-of-service order or who requires or permits a driver to violate or fail to comply with an out-of-service order.

E. In addition to other penalties prescribed by this chapter, if a motor carrier or driver is found responsible for a violation of this section, the motor carrier or driver is subject to disqualification pursuant to section 28-3312.

F. For the purposes of this section, "out-of-service order" means a declaration by a specialty officer of the department or a law enforcement officer authorized pursuant to section 28-5204 that a driver, motor vehicle or motor carrier is out of service pursuant to this chapter.

Sec. 9. Section 28-5736, Arizona Revised Statutes, is amended to read: ~~28-5736.~~ Bond requirement

A. The director may require ~~a surety bond if an interstate user does not file tax reports or remit taxes or if the director determines that the interests of this state or of member jurisdictions of the international fuel tax agreement are in jeopardy~~ ~~OR APPLICANT TO POST A SURETY OR CASH BOND IF ONE OR MORE OF THE FOLLOWING APPLY:~~

1. ~~THE INTERSTATE USER FAILS TO FILE TAX REPORTS TIMELY OR TO REMIT TAXES TIMELY.~~

2. ~~THE DIRECTOR DETERMINES THAT THE INTERESTS OF THIS STATE OR MEMBER JURISDICTIONS ARE IN JEOPARDY.~~

3. ~~THE APPLICANT IS NOT BASED IN A JURISDICTION THAT IS A MEMBER OF THE INTERNATIONAL FUEL TAX AGREEMENT.~~

4. ~~THE APPLICANT DOES NOT HAVE A GOOD STANDING STATUS FROM ANOTHER MEMBER JURISDICTION AS A RESULT OF A PREVIOUS LICENSE.~~

5. ~~THE APPLICANT DOES NOT HAVE HISTORY AS A MOTOR CARRIER IN THIS STATE OR ANY OTHER MEMBER JURISDICTION.~~

B. If required, the surety ~~OR CASH~~ bond:

1. Shall indicate that the interstate user is the principal obligor and the state is the obligee.

1 2. Shall be conditioned on the interstate user faithfully complying
2 with this article and the prompt filing of true reports and payment by the
3 interstate user of all use fuel taxes and fees due or accrued under this
4 article, together with all penalties and interest on the taxes and fees.

5 3. Shall ~~not be more than two times the quarterly tax liability of the~~
6 ~~interstate user as determined by the director~~ BE IN AN AMOUNT THAT IS
7 PRESCRIBED BY THE DIRECTOR AND THAT DOES NOT EXCEED ONE HUNDRED THOUSAND
8 DOLLARS.